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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,693	01/07/2002	Margaret Ann Kato	659/921	7442

7590

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 11/07/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/041,693

Applicant(s)

KATO ET AL.

Examiner

Bruce E Snow

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 40-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Willot (3,756,878).

Willot teaches an absorbent pant comprising a chassis having a front panel, back panel, a crotch panel and an absorbent structure 18. The absorbent structure has a liner for contact with the body (best shown in figure 4) and is considered part of the chassis. The pant further comprising a closed loop waist elastic system including an elongate sleeve member defining a passage 5 therein and at least one elongate elastic member 7, 8 disposed within said elongate passage.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3738

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 51 is rejected under 35 U.S.C. § 103 as being unpatentable over Willot (3,756,878).

Willot discloses the invention as described above. Regarding claim 51, lacking any criticality in the specification, the use of an outer cover comprising a liquid-permeable layer and a liquid-impermeable layer in lieu of those used in the references solves no stated problem and would have been an obvious matter of design choice within the skill of the art.

Claims 46-50 are rejected under 35 U.S.C. § 103 as being unpatentable over Willot (3,756,878) in view of Weil et al (5,242,436).

Willot discloses the invention as described above. However, Willot is silent in regards to the magnitude of decay of the waist elastic system. Weil et al teaches that elastic materials in a elastic waist system undergoing sustained stress/strain (extension/contraction) have diminishing forces with time (i.e. elastic creep). Therefore, it is desired to make sure this reduction in wearing forces over time doesn't fall below a minimum for wearing stability. **The elastic creep (decay) should be kept to a minimum.** See column 34, lines 51 et seq. (Weil et al further teaches the waist elastic system should not have insufficient contractive forces that result in the diaper slipping down after being worn and loaded. In contrast, excessive contractive forces may reduce the comfort for the wearer producing pressure markings on the wearer's skin See column 34, lines 20 et al.)

It would have been obvious to one having ordinary skill in the art to have utilized the concept of keeping the elastic decay to a minimum as taught by Weil et al with the closed-loop waist elastic system of Willot to maintain the functional integrity of the waist system over repeated cycling.

In regards to the specific claimed decay values, it would have been obvious to one having ordinary skill in the art to have kept this value to a minimum. Also, lacking any criticality in the specification, the use of the claimed "decay" values in lieu of those used in the references solves no stated problem and would have been an obvious matter of design choice within the skill of the art.

Claims 40-45 and 51-52 are rejected under 35 U.S.C. § 103 as being unpatentable over Seijo (3,608,551) in view of Burger (3,663,962) and, in necessary, futher in view of Hokanson et al (3,370,590).

Seijo teaches an absorbent pant (panties) comprising a chassis having a front panel, back panel, a crotch panel and an absorbent structure N inherently having a liner. The pant further comprising a closed loop waist system including an elongate sleeve member defining a passage therein formed by folding an extension portion upon itself and joining. However, it is unclear if Seijo uses an elongate elastic member disposed within said passage. Burger teaches panties having an elongate elastic member disposed in a passage around the waist. It would have been obvious to one having ordinary skill in the art to have utilized an elastic member as taught by Burger in said passage of Seijo to reinforce the waist opening and provide tension to better maintain the pant in an up position.

In the alternative, if the liner is not inherent, Hokanson et al teaches a similar disposable absorbent pant wherein the absorbent structure includes an absorbent pad 22 and a liner 22. It would have been obvious to one having ordinary skill in the art to have substituted the absorbent structure of Hokanson et al for that of Seijo to enclose the improved bulky absorbent known in the art.

### ***Response to Arguments***

Applicant's arguments filed 5/8/03 have been fully considered but they are not persuasive. Regarding claim 40, applicant argues that Willot fails to disclose any "elongate elastic member". *"Rather, Willot merely discloses draw ties, draw ribbons or fastening means"*. First, the materials used for a draw ties or draw ribbons known in the art at the time of this patent inherently have some elasticity and, therefore, can be correctly termed "elongate elastic members". Just because the ties or ribbons are tied does not mean that they have zero elasticity. Additionally, Willot teaches "fastening means" which include the "elastic element" taught by Willot in column 1, lines 34-37:

*"The use of simple plastic sheets to retain absorbent naptkins which may be fastened about the infant's waist is known. The waist portion of these sheets may be provided with an elastic element to provide tension."*

The Examiner does not believe that it is necessary to make an obviousness type rejection to teach an elastic waistband.

Applicant also argues that Willot does not inherently have a liner. The Examiner strongly disagrees. The Examiner has removed "inherently" from the rejection and it is the Examiner position that figure 4 shows the absorbent pad 18 having a cover. Further

Art Unit: 3738

the Examiner has cited art, many of which also owned by the assignee Kimberly-Clark Corporation, showing the use of a cover sheet for such pads taught by Willot was well known at the time the Patent issued.

Applicant did not argue claim 51 being rejected under 35 U.S.C. § 103 as being unpatentable over Willot (3,756,878). Any argument presented later would be considered untimely.

Applicant did not argue claims 46-50 being rejected under 35 U.S.C. § 103 as being unpatentable over Willot (3,756,878) in view of Weil et al (5,242,436). Any argument presented later would be considered untimely.

### ***Conclusion***

Applicant's amendment adding new claim 52 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

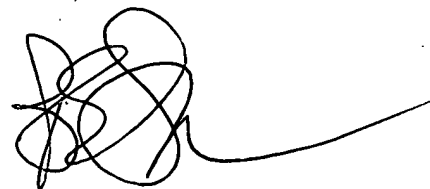
Art Unit: 3738

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

bes  
November 5, 2003

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

BRUCE SNOW  
PRIMARY EXAMINER